IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 21ST NOVEMBER 2006 / 30TH KARTHIKA 1928

WP(C).No. 24233 of 2006(I)

AGAINST THE ORDER IN IA.2037/2006 IN
OS.1661/2003 of II ADDL.M.C., ERNAKULAM

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PETITIONER:

JOSEPH JESUDAS, S/O. JOSEPH,
AGED 39, RESIDING AT NEREVETTIL HOUSE,
NEAR MARY MATHA SCHOOL, KOCHI-21.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENTS:

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1. ST. GEORGE FORANE CHURCH,
EDAPPALLY, ERNAKULAM, REPRESENTED BY ITS TRUSTEES/
KAIKKARS.

2. THE VICAR,
ST. GEORGE FORANE CHURCH, EDAPPALLY.

3. CHANCELLOR,
ARCHDIOCESE OF ERNAKULAM-ANGAMALY,
MAJOR ARCHBISHOP'S HOUSE, ERNAKULAM, KOCHI-31.

4. MAR VARKEY VITHAYATHIL,
MAJOR ARCH BISHIP, ARCHDIOCESE OF ERNAKULAM-
ANGAMALY, MAJOR ARCH BISHOP'S HOUSE, ERNAKULAM,
KOCHI-31.

BY ADV. SRI.JOHN JOSEPH VETTIKAD
SRI.SABU GEORGE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Appendix

Petitioner's Exts:

Ext.P1 True copy of the interogatories Nos.15,26,27 and 29 served on their petitioner.

Ext.P2 True copy of the answers filed by the petitioner.

Ext.P3 True copy of the counter affidavit.

Ext.P4 True copy of the order dated 19.8.06 in I.A.No.2037/06 in O.S.No.1661/03 of Munsiff Court, Ernakulam.

Respondents' Exts:

Ext.R2(a) True copy of the affidavit and petition in IA No.2037/2006 in O.S.No.1661 of 2003 filed before the Munsiff Court III, Ernakulam.

M.Sasidharan Nambiar, J.

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W.P.(C) No.24233 of 2006

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Dated this the 21st day of November, 2006.

JUDGMENT

Petitioner is the plaintiff in O.S.No.1661 of 2003 on the file of the Munsiff Court, Ernakulam. Respondents are defendants. Respondents filed I.A.No.2037 of 2006, an application to deliver interrogatories on the petitioner. Petitioner furnished answers. Under Ext.P4 order, the Munsiff Court found that the petitioner has not properly answered question Nos. 26 and 29 and directed petitioner to submit proper answers to question Nos. 26 and 29. Ext.P4 order is challenged in this petition under Articles 226 and 227 of the Constitution of India contending in the absence of specific finding that the answers furnished by the petitioner are not sufficient, court cannot direct the petitioner to furnish further answers as provided under Order XI Rule 11 of the Code of Civil Procedure and therefore Ext.P4 order is to be quashed.

2. Learned counsel appearing for the petitioners and respondent were heard. The argument of the learned

counsel appearing for the petitioner is that he has furnished sufficient answers to question Nos. 26 and 29 and even court below has no case that the answers are not sufficient and hence, Ext.P4 order is illegal and is beyond the powers of the court.

3. Learned counsel appearing for the respondents argued that in exercise of the extraordinary jurisdiction of this Court so long as the court has jurisdiction to pass the order, it cannot be challenged on the ground that the decision is wrong and therefore, the order cannot be set aside. Learned counsel appearing for respondents also argued that to question No.29 with regard to the establishment of the Churches, the answer given is in-sufficient. It is also argued that the answer given to question No.26 is also evasive and insufficient and therefore Ext.P4 order is perfectly valid.

3. Order XI Rule 11 of the Code of Civil Procedure reads thus:

> "Order to answer or answer further:- Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court for an order

> requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer, or to answer further, either by affidavit or by viva voce examination, as the Court may direct".

Under Order XI Rule 11 of the Code of Civil Procedure, the court has to direct the party to answer further either by affidavit or by viva voce examination, as the court may direct provided the court finds that the answers furnished by the party is not sufficient.

4. As rightly pointed out by learned counsel appearing for the petitioner, there is no finding in Ext.P4 that the answers given are insufficient. Answers given to question No.26 by the petitioner was that the order of the Arch Bishop dated 18.11.2003 is rightly challenged in the suit. It was in answer to the question whether petitioner has taken steps to challenge the order of the Arch Bishop as provided under the Canon Law. Though there is no direct answer to the question, it is clear from the answer that petitioner did not challenge the order as provided under the Canon Law. Similarly, answer given to question No.29 is that the Church was not established in 523 AD. The answer was on the basis that the Church

was established in AD 593. It cannot be said that the answer is not to the question asked. Even the court below did not find that the answers are insufficient. In such circumstances, Ext. P4 order is quashed. Respondents are entitled to put all these questions when the petitioner is examined as witness.

Writ Petition is allowed.

M.Sasidharan Nambiar,
Judge.

Ess 21/11

M.Sasidharan Nambiar, J.

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W.P.(C)No.24233 of 2006

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JUDGMENT

21st November, 2006.